

1 **VILLAGE OF ESTERO, FLORIDA**

2
3 **ORDINANCE NO. 2016 - 08**

4
5 **AN ORDINANCE OF THE VILLAGE COUNCIL OF THE**
6 **VILLAGE OF ESTERO, FLORIDA, APPROVING A**
7 **REZONING FROM AGRICULTURAL DISTRICT (AG-2)**
8 **AND COMMERCIAL PLANNED DEVELOPMENT**
9 **DISTRICT (CPD) TO ESTERO PLANNED**
10 **DEVELOPMENT DISTRICT (EPD) TO ALLOW A 205**
11 **UNIT MULTIFAMILY RESIDENTIAL PROJECT WITH**
12 **ASSOCIATED AMENITIES FOR PROPERTY LOCATED**
13 **AT 9050 CORKSCREW ROAD CONSISTING OF**
14 **APPROXIMATELY 16.95 ACRES; DENYING THE**
15 **APPLICATION FOR A REZONING TO RESIDENTIAL**
16 **PLANNED DEVELOPMENT DISTRICT (RPD);**
17 **APPROVING A MASTER CONCEPT PLAN, CERTAIN**
18 **DEVIATIONS AND CONDITIONS OF DEVELOPMENT;**
19 **PROVIDING FINDINGS; DENYING THE APPLICATION**
20 **FOR A COMPREHENSIVE PLAN AMENDMENT FROM**
21 **SUBURBAN LAND USE CATEGORY TO INTENSIVE**
22 **DEVELOPMENT LAND USE CATEGORY; PROVIDING**
23 **FOR CONFLICTS; PROVIDING FOR SEVERABILITY;**
24 **AND PROVIDING AN EFFECTIVE DATE.**
25

26 **WHEREAS, Genova LLC** (the “Applicant”, to include successors and assigns) filed
27 applications to amend the Transitional Comprehensive Plan Future Land Use designations and
28 to amend the zoning districts for a property located at 9050 Corkscrew Road (at the southeast
29 corner of Corkscrew Road and Via Coconut Point), Estero, FL, consisting of approximately
30 16.95 acres (the “Property”); and
31

32 **WHEREAS,** the Property consists of parcels with STRAP numbers 34-46-25-E1-
33 U1981.2358, 34-46-25-E1-0100C.0350, 34-46-25-E1-0100C.035B, 34-46-25-E1-
34 0100C.035C, 34-46-25-E1-0100C.035D, 34-46-25-E1-0100C.035E, 34-46-25-E1-
35 0100C.035G, 34-46-25-E1-0100C.035A and 34-46-25-E1-U1991.2358, and the Property is
36 legally described in Exhibit A attached hereto; and
37

38 **WHEREAS,** the Applicant requested an amendment to the Transitional
39 Comprehensive Plan Future Land Use designations from the currently designated Suburban
40 Land Use Category to the Intensive Development Land Use Category; and
41

42 **WHEREAS,** the Village has subsequently amended the Future Land Use designation
43 of the Property to Village Center; and
44

45 **WHEREAS**, the Applicant requested rezonings from Agricultural District (AG-2) and
46 Commercial Planned Development District (CPD) to Residential Planned Development
47 District (RPD); and
48

49 **WHEREAS**, the Village Center Land Use Category provides that in order for the
50 Property to develop at the requested density that it be rezoned to the Estero Planned
51 Development District; and
52

53 **WHEREAS**, the Applicant has requested certain deviations to the Estero Planned
54 Development District regulations pursuant to the Estero Transitional Land Development Code,
55 as amended; and
56

57 **WHEREAS**, the public information meeting for the Transitional Comprehensive Plan
58 Amendment and Rezoning was held at the Planning and Zoning Board on June 16, 2015; and
59 a duly noticed public hearing was held on May 3, 2016 and continued to June 22, 2016, and
60 the Planning and Zoning Board recommended approval with conditions of the request,
61 including certain deviations; and
62

63 **WHEREAS**, a duly noticed first reading was held before the Village Council on July
64 6, 2016; and
65

66 **WHEREAS**, a duly noticed second reading and public hearing was held before the
67 Village Council on July 13, 2016, at which time the Village Council gave consideration to the
68 evidence presented by the Applicant and the Village staff, the recommendations of the
69 Planning and Zoning Board and the comments of the public.
70

71 **NOW, THEREFORE**, be it ordained by the Village Council of the Village of Estero,
72 Florida:
73

74 **Section 1. Adoption of Recitals.**
75

76 The Village Council hereby adopts the foregoing recitals and incorporates them as a
77 part of this Ordinance.
78

79 **Section 2. Rezoning.**
80

81 The Village Council approves the rezoning of the Property from Agricultural District
82 (AG-2) and Commercial Planned Development District (CPD) to Estero Planned Development
83 District (EPD), to allow a maximum of 205 multifamily residential units not to exceed 45 feet
84 or 4 stories maximum (3 stories over parking), subject to the following conditions and
85 deviations.
86

87 **Section 3. Conditions.**
88

- 89 1. Master Concept Plan/Development Parameters

The development of this project must be consistent with the Master Concept Plan for “Genova”, dated last revised December 7, 2015, attached as Exhibit B, except as modified by the conditions below. This development must comply with all requirements of the Village of Estero Transitional Land Development Code (LDC) at time of local Development Order approval, except as may be granted by deviation as part of this planned development. If changes to the Master Concept Plan are subsequently pursued, appropriate approvals will be necessary.

Issuance of a development permit by the Village of Estero does not in any way create any rights on the part of the Applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the Village for issuance of the permit if the Applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertake actions that result in a violation of state or federal law.

The project is approved for 205 multi-family units with a maximum building height of 4 stories/45 feet.

2. Uses and Site Development Regulations

The following limits apply to the project and uses:

- a. Schedule of Uses – See Exhibit C
- b. Property Development Regulations – See Exhibit D

3. Open Space

The local development order must include a minimum of 40% open space within the approved planned development.

4. Buffers

Buffers must be consistent with the requirements of the Village of Estero Land Development Code, as shown on the Master Concept Plan, except as granted by deviation as part of this rezoning action.

5. Pedestrian Connections to Estero Community Park

Pedestrian connections and sidewalks will be provided as shown on the Master Concept Plan and will be constructed prior to the approval of the first certificate of compliance for the development order.

135 6. Traffic Conditions

136
137 Connections to Corkscrew Road and to Via Coconut Point are subject to the review
138 and approval of the Lee County Department of Transportation, unless the road is turned
139 over to the Village of Estero for maintenance.
140

141 7. Vehicular/Pedestrian Impacts

142
143 Approval of this zoning request does not address mitigation of the project's vehicular
144 or pedestrian traffic impacts. Additional conditions consistent with the Village of
145 Estero LDC may be required to obtain a local development order.
146

147 8. Transitional Comprehensive Plan

148
149 Approval of this zoning request does not guarantee local development order approval.
150 Future development order approvals must satisfy the requirements of the Transitional
151 Comprehensive Plan Planning Communities Map and Acreage Allocation Table, Map
152 16 and Table 1(b), as may be amended from time to time.
153

154 9. Concurrency

155
156 Approval of this rezoning does not constitute a finding that the proposed project meets
157 the concurrency requirements set forth in LDC Chapter 2 and the Village of Estero
158 Transitional Comprehensive Plan. The developer is required to demonstrate
159 compliance with all concurrency requirements prior to issuance of a local development
160 order.
161

162 10. Agricultural Uses

163
164 Agricultural Uses: Existing bona fide agricultural uses on this site are allowed:
165

166 (a) Bona fide agricultural uses consisting of row crops that were in
167 existence when the application for this project was filed may continue in the
168 areas depicted on Exhibit E until a local development order is approved for the
169 area containing the agricultural uses.
170

171 (b) Clearing or injury of native trees or other native vegetation, including
172 understory, in agricultural areas is prohibited. Existing areas of bona fide
173 agricultural use that include existing grass pasture(s) may be mowed but those
174 areas may not be cleared or expanded. Violations of this condition will require
175 restoration in accordance with LDC 10-423. This prohibition of clearing or
176 expansion of agricultural use is not intended to preclude Village approved
177 requests for removal of invasive exotic vegetation.
178

(c) Prior to issuance of a local development order for the portion that contains the agricultural use, the property owner must provide written proof, subject to approval by the Village Attorney of the following:

(1) Termination of all agricultural use on the property included in the development order application/approval. Proof must include a sworn affidavit from the person or entity holding title to the property that specifically provides:

(a) the date the agricultural uses ceased;

(b) the legal description of the property subject to the development order approval;

(c) an affirmative statement that the owner acknowledges and agrees that all agricultural uses are illegal and prohibited on the property and that the owner covenants with the Village that they will not allow agricultural uses on the property until the property is re-zoned to permit agricultural uses; and

(d) that the affidavit constitutes a covenant between the owner and the county that is binding on the owner, their assignees and successors in interest.

The affidavit must be properly recorded in the public records of the county at the owner's expense.

(2) Proof of termination of the agricultural tax exemption for the portion of the property included in the development order application/approval. Proof of termination must include a copy of the owner's request to terminate the tax exemption provided to the Property Appraiser.

11. Solid Waste Management

As part of any local development order approval for vertical development, the development order plans must include facilities in compliance with LDC Section 10-261 and Solid Waste Ordinance #11-27 for the pick-up/disposal of solid waste and recyclables. The minimum area required for, and specific locations of, these facilities will be reviewed at the time of local development order application.

12. Pattern Book

This project must be developed in substantial compliance with the Genova Pattern Book dated June 17, 2016. The Pattern Book will be reviewed by the Design Review

Board and may be required to be amended pursuant to that review, prior to issuance of any development order.

13. Gates and Walls

Perimeter walls will not be used. The project will use stealth security measures including the use of decorative fencing and landscaping in lieu of perimeter walls to provide screening.

14. Incentive Offerings

The Applicant's incentive offerings, and the time by which each offering must be completed, are incorporated into this zoning approval as Exhibit F. Location and details are shown on the Master Concept Plan and in the Pattern Book.

15. Maintenance

The Applicant will maintain the linear park, pocket park and median landscaping of Via Coconut Point in perpetuity from Corkscrew Road to the proposed new entrance to Estero Community Park. The linear park must be constructed prior to the issuance of a Certificate of Occupancy for the buildings adjacent to the linear park. The median landscaping, which will extend from Corkscrew Road to the proposed new entrance to the Community Park, must be completed prior to the approval of the first Certificate of Compliance for the development order.

16. Cash Contribution

The cash contribution offered by the Applicant for a future park entry road will be provided prior to issuance of the building permit for the third residential building. The funds will be deposited into a Village escrow account as approved by the Village attorney.

17. Public Park Disclosure

The owner shall provide disclosure on sale documents for unit owners that the project is located next to a public park with potential for events that include noise, lights and congestion.

18. Vacation of Easements

The Applicant must obtain approval from the Village Council of the vacation of the following easements:

- (a) A R.O.W. Easement located along the southerly side of Corkscrew Road and within the northeasterly section of the property. This R.O.W.

Easement is 60 feet in width and extends to a length of approximately 1300± feet; and

(b) A R.O.W. Easement located and set back from the southerly property line. The width at this R.O.W. Easement varies from 25 to 30 feet and extends to a length of approximately 60 feet from the southeast corner to the southwest corner of the property.

Section 4. Deviations.

1. Deviation from LDC Section 33-403 which requires that buildings must have a maximum setback of 25 feet from Corkscrew Road ROW, to allow a building setback of 30.7 feet is approved.

2. Deviation from LDC Section 33-351 which requires a 20 foot Type D Buffer for Multi-Family Development adjacent to right-of-ways, to allow a 10 foot buffer along a portion of Via Coconut Road adjacent to Building 3 and 5, as shown on the Master Concept Plan, is approved.

3. Deviation from LDC Section 10-285 which requires driveway connections on arterial roads to have a minimum separation of 660 feet, to allow a driveway separation of 350 feet for the egress onto Corkscrew Road, is approved subject to it being found acceptable by Lee County DOT.

4. Deviations from LDC Section 10-329(d)(1)a. as follows:

(a) Stormwater management lakes to be setback 25 feet from proposed local streets, to allow a setback of 0 (zero) feet for the internal local road; and

(b) Stormwater management lakes to be setback 50 feet from collector roads to allow stormwater management lakes to be setback 25 feet from Via Coconut Point, are approved, conditioned on the Applicant providing certification by a professional engineer at the time of the development order that the proposed structures on the roadways provide adequate traffic safety for wayward vehicles.

5. Deviation from LDC Section 10-418(3)a which states that water management lakes may have a maximum of 20% of hardened shoreline to allow:

(a) Lake 1 to have a maximum of 35% of hardened lake shoreline;

(b) Lake 2 to have a maximum of 35% of hardened lake shoreline;

(c) Lake 3 to have a maximum of 35% of hardened lake shoreline;
is approved.

313 6. Deviations from LDC Section 34-1748 as follows:
314

315 (a) Entrance gates be located a minimum of 100 feet from the existing
316 intersecting street, to allow the gates to be located 85± feet from the intersecting
317 street;

318 (b) The gate to be designed in such a manner to allow a minimum of five
319 vehicles to safely pull-off the intersecting street while waiting to enter, to allow
320 a minimum of four vehicles to safely pull-off the intersecting street while
321 waiting to enter;

322 (c) A paved turn-around, having a turning radius sufficient to accommodate
323 a U-turn for a single unit truck vehicle per the AASHTO Green Book must be
324 provided on the ingress side of the gate, to allow a turn-around to be provided
325 after the gate; are denied.
326

327 7. Deviation from LDC Section 34-2020 which requires a total of 36 parking
328 spaces for the amenity center, to allow for a minimum of 26 parking spaces to be
329 provided, is approved.
330

331 8. Deviation from LDC Section 33-229 which limits building heights outside of
332 the Interstate Highway Interchange Area to three stories or 45 feet, whichever is less,
333 to allow:

334 (a) A maximum height of 45 feet measured to the eave of the roof; and

335 (b) A maximum of 4 stories, with 3 stories of residential uses over a ground
336 floor of parking; is approved.
337

338 9. Deviation from LDC Section 10-296(i)(2) which requires a minimum 24 foot
339 wide pavement width for Category B roads with curb-and-gutter drainage, to allow a
340 pavement width of 20 feet, is approved, conditioned on the use of pavers on all
341 pavement surfaces and conditioned on the Applicant providing certification by a
342 professional engineer at the time of the development order that the proposed road
343 design provides adequate traffic safety for wayward vehicles.
344

345 10. Deviation from LDC Section 34-1743 which requires perimeter fences and
346 walls to be setback 7.5 feet from the right-of-way, to allow a setback of 3.5 feet for a
347 portion of the perimeter railing adjacent to Building 3, is approved.
348

349 11. Deviation from LDC Section 10-415 which requires a multi-family residential
350 development to provide a minimum of 40% open space, to allow a minimum open
351 space of 35%, is denied.
352

353 12. Deviation from LDC Section 34-935(b)(1)e which requires buildings to be
354 setback from the perimeter of the project a minimum of one-half the height of the
355 building, to allow a building setback of 18 feet for a small portion of the southeast
356 corner of Building 4 which has a maximum height of 45 feet, is approved.
357

13. A deviation from Section 33-508(b)(2) and Figure 33-508(b) as proposed, which identifies connecting streets within an overall Framework Plan described in Division 6, to allow for private streets within the project is approved.

14. A deviation from Section 10-296(d), specifically 10-296(i)(2) to allow for a minimum of 20 feet from inside edge to inside edge of curbs for internal, private access drives, is approved, conditioned on the Applicant providing certification by a professional engineer at the time of the development order that the proposed design of access drives provides adequate traffic safety for wayward vehicles. Minimum ROW widths shall not apply.

Section 5. Comprehensive Plan Amendment.

Applicant's request to amend the Transitional Comprehensive Plan Future Land Use designation from the Suburban category to Intensive Development category is denied.

Section 6. Rezoning.

Applicant's request to rezone the property from Agricultural and Commercial Planned Development to Residential Planned Development, is denied.

Section 7. Findings and Conclusions.

Based on the evidence in the record and its analysis of the relevant Transitional Comprehensive Plan goals, objectives and policies, Transitional Land Development Code regulations, and codes and regulations, the Village Council makes the following findings and conclusions.

1. The Applicant qualifies for rezoning by demonstrating compliance with the Transitional Comprehensive Plan for the Village Center, the Transitional Land Development Code, and other applicable codes and regulations.

2. The rezoning is consistent with the densities, intensities and general uses set forth in the Transitional Comprehensive Plan.

3. The application meets the standards for a Tier 2 density of 12.1 units per acre, based on the criteria for achieving the base density, and the Applicant's incentive offers.

4. The request as conditioned, is compatible with existing or planned uses in the surrounding area.

5. Approval of the request will increase traffic but not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development.

- 403
404 6. The request will not adversely affect environmentally critical area and natural
405 resources.
406
407 7. Urban services, as defined in the Transitional Comprehensive Plan, are, or will
408 be, available and adequate to serve the proposed land use.
409
410 8. The proposed use, as conditioned, is appropriate at the subject location.
411
412 9. The recommended conditions to the Master Concept Plan and other applicable
413 regulations provide sufficient safeguards to the public interest.
414
415 10. The recommended conditions are reasonably related to the impacts on the
416 public's interest created by or expected from the proposed development.
417
418 11. The deviations recommended for approval:
419
420 (a) Enhance the planned development; and
421 (b) Preserve and promote the general intent of the LDC to protect the public
422 health, safety and welfare.
423
424 12. In accordance with Section 33-518(b) of the Land Development Code, the
425 Village has determined that the Applicant's incentive offers:
426
427 (1) (meet)(do not meet) the goals and objectives of the comprehensive plan.
428 (2) (meet)(do not meet) the General Criteria under Sec. 33-502, and
429 (3) (create)(do not create) significant public benefit commensurate with the
430 value of such incentive offers to the Village, and the appropriateness of such
431 incentive offers to the applicable Tier and to the particular development
432 plan.
433
434 13. The Village Council has determined that the project is (consistent)(not
435 consistent) with the general criteria in Section 33-502 of the Land Development Code.
436

437 **Section 8. Exhibits.**
438

439 The following exhibits are attached to this Ordinance and incorporated by reference:
440

441	Exhibit A	Legal Description
442	Exhibit B	Master Concept Plan
443	Exhibit C	Schedule of Uses
444	Exhibit D	Property Development Regulations
445	Exhibit E	Agricultural Affidavit
446	Exhibit F	Applicant's Incentive Offerings and Pattern Book

447

Section 9. Conflicts.

All sections or part of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance shall be repealed to the extent of such conflict upon the effective date of this Ordinance.

Section 10. Severability.

Should any section, paragraph, sentence, clause, phrase or other part of this Ordinance subsequent to its effective date be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any portion thereof, other than the part so declared to be invalid.

Section 11. Effective Date.

This Ordinance shall be effective on the date the Comprehensive Plan Amendment CPA2016-01 adopted by Ordinance 2016-04 becomes effective.

PASSED on first reading this 6th day of July, 2016.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this ____ day of _____, 2016.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: _____
Kathy Hall, MMC, Village Clerk

By: _____
Nicholas Batos, Mayor

Reviewed for legal sufficiency:

By: _____
Nancy E Stroud, Village Land Use Attorney

Vote:	AYE	NAY
Mayor Batos	_____	_____
Vice Mayor Levitan	_____	_____
Councilmember Boesch	_____	_____
Councilmember Brown	_____	_____
Councilmember Errington	_____	_____
Councilmember Ribble	_____	_____
Councilmember Wilson	_____	_____